

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

AIR FORCE INSTRUCTION 51-703

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Law

FOREIGN CRIMINAL JURISDICTION

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This instruction implements Air Force Policy Directive (AFPD) 51-7, *International Law*, 5 Feb 2009, and Department of Defense (DoD) Directive 5525.1, *Status of Forces Policies and Information*, August 7, 1979, With Change 2. For related information, see AFJI 51-706, *Status of Forces Policies, Procedures, and Information*, 15 Dec 1989 (**Joint Departmental Publication**). This Air Force Instruction (AFI) outlines the pretrial custody, international hold, and reassignment or transfer procedures for Air Force personnel, including military members, civilian employees, and dependents, being held on criminal charges under foreign law. It also explains how a Military Legal Advisor (MLA) is appointed and the scope of an MLA's responsibilities in foreign court proceedings. This AFI applies to all United States Air Force (USAF), Air Force Reserve (USAFR), and Air National Guard (ANG) personnel, whether permanently assigned or transient. Waivers of requirements identified with a T-0 must be sought through The Judge Advocate General (TJAG) to a non-Air Force Agency. TJAG is the waiver authority for paragraph 7. No other waivers are authorized.

Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using the AF Form 847, *Recommendation for Change of Publication*; route AF Form 847s from the field through the appropriate functional's chain of command. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with AFMAN 33-363, *Management of Records*, and disposed of in accordance with the Air Force Records Disposition Schedule located at <https://www.my.af.mil/afrims/afrims/afrims/rims.cfm>. This publication may be

supplemented at any level, but all direct Supplements must be routed to the OPR of this publication for coordination prior to certification and approval.

Section A—Pretrial Custody in Foreign Court Cases

1. Releasing Personnel from Foreign Custody. The Air Force will seek the release from foreign custody of any Air Force personnel charged with criminal offenses under foreign laws.

1.1. If an international agreement between the United States and the host country provides for the United States to exercise pretrial custody, do not post bail bonds using US funds before getting approval from HQ USAF Operations and International Law Directorate (HQ USAF/JAO).

2. Transferring Personnel. Air Force authorities will not transfer, curtail, or reassign Air Force personnel charged with criminal offenses in a foreign court until final disposition of the charges except in accordance with that court's approved procedures or after coordination with HQ USAF/JAO and with approval of the designated commanding officer.

3. Ensuring Personnel Remain in Country. Air Force component commands supporting a Geographic Combatant Command will establish procedures to ensure that Air Force permanent party, temporary duty, or transient personnel within the Geographic Combatant Command's area of responsibility, subject to foreign criminal jurisdiction do not depart the country in which the alleged criminal conduct occurred before the final disposition of charges, except in accordance with paragraph 2 (T-0).

3.1. Air Force authorities will place on international hold all military personnel formally charged or military personnel the host nation is formally and actively investigating for possible violation of host country law. Air Force authorities may also place on international hold any military members who have been designated as witnesses in pending criminal investigations or prosecutions.

3.2. Air Force authorities will adhere to the following minimum international hold procedures in cases in which the Air Force maintains or accepts custody of an individual allegedly involved in a foreign crime or a foreign court case. This instruction also covers cases in which the individual has posted bail from personal funds.

3.2.1. Military Members. Commanders will order military members in writing not to depart the host country until properly released from international hold. Military members will acknowledge these orders in writing.

3.2.2. ANG/USAFR Personnel. Members of the ARC(ANG and USAFR) serving on orders placed on international hold may require extensions of their military orders. Requests for military orders extensions will be coordinated with HQ USAF/A1 and the 201 MSS/ ANG Readiness Center or the Air Force Reserve Command Judge Advocate (AFRC/JA) respectively for ANG/USAFR personnel (T-0).

3.3. Civilian Employees. Commanders will ask their civilian employees to acknowledge in writing that they will not be transferred, reassigned, or allowed to use any type of US funded transportation to leave the host country until they are properly released (T-0).

3.4. Family members. Commanders will ask family members, age 16 or over, of military members or civilian employees to acknowledge in writing that they will not be transferred from the host country on military orders or be given any kind of US-funded transportation until they are properly released from international hold. Family members' sponsors will also be asked to acknowledge the statement. For family members under the age of 16, ask only the sponsors to acknowledge the statement. (T-0)

4. Designated Commanding Officer (DCO). In each geographical area assigned to a geographic combatant commander, the Air Force Service Component will verify the geographic combatant commander designates a commanding officer (DCO) for each country in which Air Force personnel, contractors or command sponsored dependents are normally located.

5. Attending Court Hearings. Air Force personnel facing foreign criminal charges are personally responsible for attending all scheduled court hearings. When these individuals are in US military custody, commanders will make them available at all hearings as the court requests (T-0).

Section B—Military Legal Advisors (MLA)

6. Notifying Personnel. Air Component Commanders will ensure that all Air Force military members facing criminal charges in foreign courts are promptly notified of their ability to request the services of an MLA. Commanders must notify personnel when charges are filed or a summons is issued. In cases involving no significant risk of confinement, such as minor traffic offenses, members can be notified by mail, with receipt confirmation. If mail postal services are not available in the host country, commanders must notify the member verbally (telephonically, or in person) or through electronic means with receipt confirmation. (T-0)

7. Appointing an MLA. If a member requests an MLA, the local staff judge advocate (SJA) or, if none is assigned locally, the air component commander SJA appoints one as soon as possible. The SJA cannot serve as an MLA under any circumstances. (T-1)

8. Qualifications for MLA Appointments. Only Air Force judge advocates may serve as MLAs for Air Force personnel. Judge advocates assigned as Area Defense Counsel (ADC) may be appointed MLAs if approved by the Chief Senior Defense Counsel.

8.1. When neither an ADC nor another judge advocate is available, the SJA determines how a member requesting an MLA will be advised. In serious cases, such as those likely to prompt administrative discharge action or confinement, the SJA may appoint temporary duty MLAs. In minor cases, including those with no substantial likelihood of administrative discharge action or confinement, the SJA may arrange for advice by telephone or another sufficient method. The SJA will not appoint as MLA any person who has acted, or is expected to act, as trial counsel or trial observer in a case involving the member.

9. Duties of the MLA. The MLA does not act as a defense counsel. The MLA provides legal advice to the member on all US-related matters arising out of criminal charges pending in a foreign court, including:

- The client's military status and any administrative actions that may be taken by or against that client.
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- The rights guaranteed to the accused in applicable treaties or other international agreements
- between the United States and the country concerned.
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- DoD policies on personnel subject to foreign criminal jurisdiction.

9.1. The lawyer-client privilege applies to all communications between MLAs and their Air Force clients.

10. Role of the MLA in Foreign Court Proceedings. The MLA may participate in pretrial discussions, facilitate communications between the client's foreign counsel and military authorities, and may also help in obtaining documents and witnesses for the defense. The MLA must never seek to supplant the legal advice of the client's foreign counsel regarding the foreign proceeding.

11. The MLA may communicate with and advocate the client's interests to the foreign counsel, the trial observer, the claims officer, the SJA, the client's commander, and other US officials. However, the MLA must not make any official representations to foreign authorities without obtaining permission from the SJA.

12. The MLA should not attend foreign trial or hearings unless a member's right to adequate legal counsel would otherwise be deprived in a particular case. If the MLA attends he or she should appear as an unofficial spectator. The MLA may not sit at the counsel table, present pleadings or arguments, or otherwise participate in the court proceedings. The MLA may make suggestions to the client's foreign counsel who remains responsible for the defense of the foreign case.

ROBERT G. KENNY
Major General, USAFR
Performing the Duties of
The Judge Advocate General

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

DoDD 5525.1, *Status of Forces Policies and Information*, August 7, 1979, with Change 2

AFPD 51-7, *International Law*, 5 February 2009

AFJI 51-706, *Status of Forces Policies, Procedures, and Information*, 15 December 1989

Adopted Forms:

AF Form 847, *Recommendation for Change of Publication*, 22 September 2009

Abbreviations and Acronyms

ADC—Area Defense Counsel

AF—Air Force

AFI—Air Force Instruction

AFJI—Air Force Joint Instruction

AF/JAO—Operations and International Law Directorate

AFMAN—Air Force Manual

AFPD—Air Force Policy Directive

ANG—Air National Guard

AFRC—Air Force Reserve Command

DCO—Designated Commanding Officer

DoD—Department of Defense

MLA—Military Legal Advisor

MSS—Mission Support Squadron

OPR—Office of Primary Responsibility

SJA—Staff Judge Advocate

TJAG—The Judge Advocate General

US—United States

USAF—United States Air Force

USAFR—United States Air Force Reserve